

April 28, 2004

To: Director, US Fish and Wildlife Service
Assistant Director, Endangered Species, USFWS
Regional Directors, USFWS

From: Assistant Secretary for Fish and Wildlife and Parks

Subject: Endangered Species Guidance Letter No. 2, Critical Habitat

Critical Habitat

A. Generally:

Habitat loss is one of the key factors in the decline of species to threatened or endangered status. Habitat is necessary for species to thrive and survive and not become extinct.

The Endangered Species Act sets up an essentially legal construct called *critical habitat*. This legal process should not be confused with the creation of actual habitat that can be observed and in which species can live. "Critical habitat" is a legal and administrative exercise that adds very little additional conservation benefit to a listed species. At the same time, it creates a tremendous social and economic disruption to the communities that are affected.

Although there are superior methods by which to conserve habitat for species, the designation of critical habitat must be founded on the best available science, an accurate assessment and characterization of existing management and protection measures, and a sound economic analysis. Where there is no data available, or the available data is flawed, speculation must not be substituted. In light of the limited value of critical habitat designations in conservation

terms, and the significant costs to society at large, critical habitat designations must be no greater than the habitat identified as essential to the conservation of the species.

B. Important Points:

- **"Critical habitat," as defined in the Act, will be designated for each species at the time of listing, except where not prudent or not determinable.**
- **Habitat, as that term is used in conservation biology, is indispensable to the continued existence of species. But, critical habitat designations are only a small element of our nation's conservation strategy and arguably, the most costly. Accordingly, designations should not detract from other conservation efforts that provide greater species benefits. The Service's critical habitat designations must be based on the best available data and accurate, complete economic analyses. [Economic analyses must be consistent with OMB guidelines. Further guidance on economic analyses is forthcoming.] Critical habitat designations must not be based on speculation or determinations that lack supporting data.**
- **Do not designate critical habitat where existing management or protection measures adequately conserve essential habitat and those measures are likely to continue for the foreseeable future. Protected lands such as state and national parks, wildlife refuges, national forests, etc., are examples of areas that may not need special management or protection.**
- **Designate unoccupied habitat only when occupied habitat is insufficient to provide the limited additional conservation benefit of critical habitat.**
- **The information provided to the Secretary for the relative benefit assessment provided for under section 4(b) (2) of the Act, must be as rigorous as the biological analysis.**
- **Areas covered by a completed Habitat Conservation Plan generally do not meet the definition of critical habitat in section 3(5)(A) for those species**

whose habitat is conserved by the HCP, whether or not the species is a "covered species" in the HCP.

- Pending HCPs are to be considered for exclusion under section 4(b) (2).
- Military lands covered by an Integrated Natural Resources Management Plan (INRMP) are not designated critical habitat if the INRMP provides a benefit for the species for which the critical habitat is proposed.
- When considering other military lands for exclusion under section 4(b) (2), defer to the military's analysis of national security and military operational and training needs.
- When considering state managed or tribal lands, defer to state and tribal assessment of management and protection measures in the absence of contrary evidence.
- Working with landowners, local governments, states, and tribes on a voluntary partnership basis often provides conservation benefits superior to the designation of critical habitat.
- The "precautionary principle" is not used as a scientific tool in our critical habitat designations. Policymakers may weigh precautionary approaches in the context of risk-based management decisions.
- Complete and accurate administrative records are essential to the process of critical habitat designations.

Detailed guidance is contained in the Draft Interim Critical Habitat Guidance dated April 30, 2004. This guidance compiles in a single document instructions that have been applied on an ad hoc basis during the last two years. Staff should relay comments and suggestions through their supervisors as they use the guidance. The guidance will be revised based on staff and other comments, experience, and suggestions after there has been an opportunity to apply the guidance.